

RESOLUTION GRANTING THIRD ROUND SUBSTANTIVE CERTIFICATION #30-09

East Brunswick Township, Middlesex County

WHEREAS, on December 16, 2008, East Brunswick Township, Middlesex County, petitioned the Council on Affordable Housing (COAH) for substantive certification of a Housing Element and Fair Share Plan addressing its total 1987-2018 affordable housing obligation; and

WHEREAS, pursuant to N.J.S.A. 52:27D-313 and N.J.A.C. 5:96-3.5, on January 7, 2009, the Township published notice of its petition in the *Home News Tribune*, which is the newspaper of general circulation within the county; and

WHEREAS, an objection to the plan was received by COAH from Fair Share Housing Center during the 45-day objection period, which ended February 26, 2009; and

WHEREAS, mediation commenced on June 2, 2009; and

WHEREAS, mediation was concluded on June 2, 2009; and

WHEREAS, a mediation report was issued on June 19, 2009 as part of the Township's Compliance Report; and

WHEREAS, the Township's fair share plan addresses a total 1987-2018 affordable housing obligation of 1,191 units, consisting of a 46-unit rehabilitation share, 648-unit prior round obligation and a 497-unit projected growth share obligation pursuant to N.J.A.C. 5:97; and

WHEREAS, COAH staff has reviewed the Township's Housing Element and Fair Share Plan, which is incorporated by reference herein; and

WHEREAS, the Township proposes to address its 46-unit rehabilitation share with credits from a rehabilitation program for 46 units; and

WHEREAS, the Township proposes to address its 648-unit prior round obligation with 169 prior cycle credits. In addition, it will address its remaining prior round obligation with 62 credits for 62 units at Windsong, a family, sale development; 91 credits for 91 units at Country Woods, a family, sale development; 64 credits for 64 units at Kingswood Station, a family, sale development; 29 credits for 29 units at Society Hill II East, a family, sale development; 21 credits for 21 units at The Club, an age-restricted, sale development; 34 credits for 34 units at Summerhill Meadows, a family, sale development; 41 credits for 41 units at Timber Hollow, a family, sale development; 24 credits for 24 units for the Market to Affordable program; 4 credits and 4 bonuses for 4 units at Two River Road, a 100 percent affordable development for families; and 79 credits and 26 bonuses for 79 units at Oak Creek, a 100 percent affordable, age-restricted, rental development; and

WHEREAS, East Brunswick proposes to address a portion of its 497-unit projected growth share obligation with 3 credits for 3 units for an Allies special needs rental development; 5 credits for 5 units for a special needs rental development on Gates Avenue; 24 credits for 24 units for the Market to Affordable program; 29 credits for 29 units at Fox Meadows, a family, sale development; 57 credits for 57 units at Crosspointe, a family, sale development; 1 credit for 1 unit at Society Hill II East, a family, sale development; and 39 credits and 39 compliance bonuses for 39 units at Oak Creek Two, a municipally sponsored project; and

WHEREAS, East Brunswick Township proposes to address its remaining projected growth share obligation of 314 units with 222 credits and 85 rental bonuses for 222 units for its Market to Affordable program; 3 credits for 3 units for a Community Options special needs rental development; and 24 credits for 24 units at Arisa, an age-restricted, rental development; and

WHEREAS, East Brunswick requested a waiver from N.J.A.C. 5:97-6.9(b)4, to allow the Township to exceed the maximum units permissible in a market to affordable program; and

WHEREAS, that subsection provides that the maximum number of market to affordable units which a municipality may include in its plan is ten sale and ten rental units or ten percent of the fair share obligation, whichever is greater; and

WHEREAS, an exception to this maximum number may be granted when the municipality has demonstrated a successful history of a market to affordable program; and

WHEREAS, East Brunswick therefore requests a waiver, pursuant to N.J.A.C. 5:96-15, to implement a 222-unit rental Market to Affordable program to address a portion of its growth share obligation; and

WHEREAS, East Brunswick's waiver request fosters the production of affordable housing as much needed family rental units will be made available to income eligible households in a timely manner; and

WHEREAS, the Township's waiver request fosters the intent of, if not the letter of, the Council's rules because all the units will have 30-year deed restrictions, will be affirmatively marketed and will be occupied by income eligible households; and

WHEREAS, East Brunswick has a mix of housing types in its plan with for-sale family units, family rental units, age-restricted sale units and age-restricted rental units; and

WHEREAS, a COAH task force met on June 2, 2009 to discuss the Township's waiver request; and

WHEREAS, the task force recommends granting the waiver from N.J.A.C. 5:96-5:97-6.9(b)4 to allow East Brunswick to exceed the 10 percent maximum for the Market to Affordable program; and

WHEREAS, the task force recommends requiring East Brunswick to complete at least 20 Market to Affordable units each year, in keeping with actual growth; and

WHEREAS, pursuant to N.J.A.C. 5:96-6.2(a)2, on June 19, 2009 COAH issued a Compliance Report (attached as Exhibit A and incorporated by reference herein) recommending approval of the Township's petition for third round substantive certification; and

WHEREAS, there was a 14-day period to submit comments to the COAH Compliance Report pursuant to N.J.A.C. 5:96-6.2(b) and COAH received comments from Fair Share Housing Center that have been responded to in a separate report (Exhibit B) and are incorporated by reference herein.

NOW THEREFORE BE IT RESOLVED that the Housing Element and Fair Share Plan submitted by the Township of East Brunswick comports to the standards set forth at N.J.S.A. 52:27D-314 and meets the criteria for third round substantive certification pursuant to N.J.A.C. 5:96-6.3; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11; and WHEREAS, East Brunswick requested a waiver from N.J.A.C. 5:97-6.9(b)4, to allow the Township to exceed the maximum units permissible in a market to affordable program; and

BE IT FURTHER RESOLVED that East Brunswick requested a waiver from N.J.A.C. 5:96-5:97-6.9(b)4 to allow East Brunswick to exceed the 10 percent maximum for the Market to Affordable program by implementing a 222-unit rental Market to Affordable program to address a portion of its growth share obligation; and

BE IT FURTHER RESOLVED that East Brunswick's waiver request fosters the production of affordable housing as much needed family rental units will be made available to income eligible households in a timely manner; and

BE IT FURTHER RESOLVED that the Township's waiver request fosters the intent of, if not the letter of, the Council's rules because all the units will have 30-year deed restrictions, will be affirmatively marketed and will be occupied by income eligible households; and

BE IT FURTHER RESOLVED that East Brunswick has a mix of housing types in its plan with for-sale family units, family rental units, age-restricted sale units and age-restricted rental units; and

BE IT FURTHER RESOLVED that a COAH task force met on June 2, 2009 to discuss the Township's waiver request; and

BE IT FURTHER RESOLVED that the Council grants the waiver from N.J.A.C. 5:96-5:97-6.9(b)4 to allow East Brunswick to exceed the 10 percent maximum for the Market to Affordable program; and

BE IT FURTHER RESOLVED that East Brunswick is to complete at least 20 Market to Affordable units each year, in keeping with actual growth; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.2(a), after having reviewed and considered all of the above, COAH hereby grants third round substantive certification to the Township of East Brunswick; and

BE IT FURTHER RESOLVED that after receiving final substantive certification, pursuant to N.J.A.C. 5:96-6.3(e), the Township shall adopt all implementing Fair Share Ordinances within 45 days of this grant of substantive certification; and

BE IT FURTHER RESOLVED if the Township fails to timely adopt its Fair Share Ordinances, COAH's grant of substantive certification shall be void and of no force and effect; and

BE IT FURTHER RESOLVED that East Brunswick shall submit all Fair Share Ordinances to COAH upon adoption; and

BE IT FURTHER RESOLVED that East Brunswick shall comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting East Brunswick's actual growth pursuant to N.J.A.C. 5:97-2.5; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-10.1, COAH shall conduct biennial plan evaluations upon substantive certification of East Brunswick's Housing Element and Fair Share Plan to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing; and

BE IT FURTHER RESOLVED that if upon any biennial review the difference between the number of affordable units constructed or provided in East Brunswick and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a pro-rated production shortage of 10 percent or greater, the Township is not adhering to its implementation schedule pursuant to N.J.A.C. 5:97- 3.2(a)4 or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, then the Council may direct the municipality to amend its plan to address the shortfall; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:97-2.5(e), if the actual growth share obligation determined is less than the projected growth share obligation, East Brunswick shall continue to provide a realistic opportunity for affordable housing to address the projected growth share; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(b), East Brunswick's substantive certification shall remain in effect until December 16, 2018; and

BE IT FURTHER RESOLVED that any changes to the facts upon which this substantive certification is based or any deviations from the terms and conditions of this substantive certification which affect the ability of the Township to provide for the realistic opportunity of its fair share of low- and moderate-income housing and which the Township fails to remedy, may render this certification null and void.

I hereby certify that this resolution was
duly adopted by the Council on Affordable
Housing at its public meeting on August 12, 2009

A handwritten signature in black ink, reading "Renee Reiss". The signature is written in a cursive, flowing style with large loops.

Renee Reiss, Secretary
Council on Affordable Housing



***Council on Affordable Housing
Compliance Report
June 19, 2009***



Municipality: *Township of East Brunswick*
County: *Middlesex County*

COAH Region: *3*
Planning Area: *1, 4 and 5*
Special Resource Area: *N/A*

Housing Element and Fair Share Plan Adopted: *December 3, 2008*
Petition for 3rd Round Substantive Certification: *December 16, 2008*
Completeness Determination: *December 23, 2008*
Date of Publication: *January 7, 2009*

Objections Received: *Fair Share Housing Center*
Mediation Commenced: *June 2, 2009*
Mediation Concluded: *June 2, 2009*

Petition Includes:
VLA: *No*
GPA: *No*
Waiver: *Yes*

Date of Site Visit: *June 17, 2009*

History of Approvals:

	COAH	JOC	N/A
First Round:		<i>7/12/84</i>	
Second Round:	<i>6/4/97</i>		
Extended Certification:	<i>3/9/05</i>		

Plan Preparer: *Leslie McGowan, PP, AICP, Director of Planning & Engineering, East Brunswick Twp.*

Municipal Housing Liaison: *Linda Rubenstein*

SUMMARY OF FAIR SHARE OBLIGATION

Rehabilitation Share	46
Prior Round Obligation	648
Projected Growth Share Obligation (Net)	497

ACTUAL GROWTH and GROWTH SHARE through 2007¹

Res Units (#)	Actual Res Growth Share	Jobs (#)	Actual Non-Res Growth Share	Actual TOTAL Growth Share
182	36.4 units	594	37.12 units	74 units

COMPLIANCE PLAN SUMMARY

Obligation	Credit/ Mechanism Type	# Units Completed	# Units Proposed	TOTAL
Rehabilitation: 46 units				
Credits	Post-April 1, 2000	46		46
Rehabilitation Subtotal				46
NEW CONSTRUCTION:				
Prior Round: 648 units				
Credits	Prior Cycle	169		169
	Post-1986	449		449
Prior Round Bonuses	Rental	30		30
Prior Round Subtotal				648
Growth Share: 497 units				
Credits	Post-1986	57		144
Proposed Mechanisms	Market to Affordable		222	222
	S/SN Housing – Community Options		3	3
	Incl. Zoning - Arisa		24	24
Growth Share Bonuses	Compliance	39		39
	Rental	85		85
Growth Share Subtotal				517

¹ This growth share number does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.5; therefore, the actual growth share may vary. In the case of East Brunswick, the NJ Construction Reporter shows 0-unit residential and 0 square footage growth since January 1, 2004, which is an error. The error is due to the private vendor used by the Township for its reporting software, Sunguard THE. The software prevents the DCA Division of Codes and Standards from receiving the certificate records. The problem will be corrected in the future, but for the purposes of this report, COAH will use information provided directly by the Township in the Housing Element, which goes through 2007.

I. HOUSING ELEMENT

Pursuant to N.J.S.A. 40:55D-28(b), the Housing Element is a required section of the Municipal Master Plan. The Housing Element must be designed to achieve the goal of access to affordable housing to meet existing and future housing needs, with special attention given to low- and moderate-income households. The housing needs analysis must include demographic information on existing and projected housing stock and employment characteristics, a quantification of low- and moderate-income housing need, and a consideration of the lands within the municipality that are most appropriate to accommodate such housing. East Brunswick's Housing Element includes sufficient information regarding housing stock, demographic and employment characteristics and population trends pursuant to N.J.S.A. 52:27D-310.

Under N.J.A.C. 5:97-2.1(b), the Housing Element must also set forth the municipality's fair share obligation, which is the sum of the rehabilitation share, the prior round obligation, and the growth share.

A. Rehabilitation Share

The rehabilitation share is the number of existing housing units within a municipality as of April 1, 2000, that are both deficient and occupied by households of low or moderate income. As indicated in Appendix B of N.J.A.C. 5:97, East Brunswick has a rehabilitation share of 46 units.

B. Prior Round Obligation

The prior round obligation is the cumulative 1987-1999 new construction obligation provided in Appendix C of N.J.A.C. 5:97. East Brunswick has a prior round obligation of 648.

C. Projected Growth Share

The projected growth share is initially calculated based on household (residential) and employment (non-residential) 2004-2018 projections. Pursuant to Appendix F of N.J.A.C. 5:97, East Brunswick has a residential projection of 1,277 units and a non-residential projection of 3,869 jobs, which results in an initial projected growth share obligation of 497 affordable units. East Brunswick's total projected growth share for the period 1999-2018 is 497 affordable units consisting of a 255-unit projected residential growth share and a 242-unit projected non-residential growth share.²

SUMMARY OF FAIR SHARE OBLIGATION

Rehabilitation Share	46
Prior Round Obligation	648
Projected Growth Share Obligation (Net)	497

II. FAIR SHARE PLAN

A Fair Share Plan, as required under N.J.A.C. 5:97-3.1, describes the completed or proposed mechanisms and funding sources, if applicable, that will be utilized to specifically address a municipality's rehabilitation share, prior round obligation, and growth share obligation and includes the draft ordinances necessary to implement that plan. Affordable housing must be provided in direct proportion to the growth share obligation generated by the actual growth.

East Brunswick's Fair Share Plan, and the supporting documentation incorporated by reference therein, addresses the requirements of N.J.A.C. 5:97-3.1 as follows:

² Pursuant to N.J.A.C. 5:97-2.2(d), East Brunswick's residential projection of 1,277 is divided by 5 to yield 255.4 units and the nonresidential projection of 3,869 jobs is divided by 16 to yield 241.8 units. East Brunswick's total projected growth share is therefore 497 units (255.4+ 241.8).

A. Plan to Address Rehabilitation Share

Rehabilitation Share Credits

East Brunswick is requesting credit for 46 units rehabilitated subsequent to April 1, 2000. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

Rehabilitation Credits

Rehabilitation Program	# Credits
East Brunswick Township Housing Rehab Program	46
TOTAL	46

B. Plan to Address Prior Round Obligation

Prior Round Obligation Credits

East Brunswick is addressing the prior round obligation with 169 prior cycle credits and 536 post-1986 credits. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

Prior Cycle Credits

Project/Development Name	Year Built	Type of Affordable Unit	# Units/Bedrooms
Halls Corner (HUD Section 236 project)	1983	Age-restricted	153
Victory Gardens	1981	Family rental	12
Summerhill Group Home	1982	Supp./Special Needs	4
TOTALS			169

Post-1986 Credits

Project/Development Name	Year Built or Approved	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Windsong	1998	Inclusionary for-sale	62	-	-	62
Country Woods	1998	Inclusionary family for-sale	91	-	-	91
Kingswood Station	1991	Inclusionary family for-sale	64	-	-	64
Two River Road	1993	100% Affordable family rental	4	Rental	4	8
Oak Creek (HUD Section 202)	1992	100% Affordable age-restricted rental	79	Age-restricted rental	26	105
Society Hill II East	1986	Inclusionary family for-sale	29	-	-	29
The Club	1988	Inclusionary age-restricted for-sale	21	-	-	21
Summerhill Meadows	1987	Inclusionary family for-sale	34	-	-	34
EBCHC Buy Down	various	Market-to-Affordable rental	24	-	-	24
Timber Hollow		Inclusionary family for-sale	41	-	-	41
TOTALS			449		30	479

Proposed Affordable Housing Mechanisms

East Brunswick is relying on credits and therefore is not proposing any additional affordable housing mechanisms to address its prior round obligation.

Prior Round Obligation Parameters

East Brunswick has satisfied the applicable Prior Round parameters as follows:

Prior Round Rental Obligation:³ 0 Units

Development/Project Name	Type of Affordable Unit	Units
Two River Road	100% affordable family rental	4
Oak Creek	100% affordable age-restricted rental	79
EBCHC Buy Down	Family rental	24
TOTAL		107

Prior Round Age-Restricted Maximum⁴ : 120 Units

Development/Project Name	Type of Affordable Unit	Units
Oak Creek	100% affordable age-restricted	79
The Club	Inclusionary age-restricted	21
TOTAL		100

³ Rental Obligation: Rental Requirement = Rental Requirement = 25 percent (38-46) = 0 N.J.A.C. 5:97-3.10(b)2

⁴ Age-Restricted Maximum: Age-Restricted Maximum = 25 percent (648 - 169) N.J.A.C. 5:97-3.10(c)1

Prior Round Rental Bonus Maximum⁵ : 120 Units

Development/Project Name	Type of Bonus	# Bonuses
Two River Road	100% affordable family rental	4
Oak Creek	100% affordable age- restricted	26
TOTAL		30

COAH's May 16, 1997 second round Compliance Report noted that East Brunswick had a prior round rental obligation of 0, but that the Township may receive 30 rental bonuses for Two River Road and Oak Creek as follows, "As previously noted, as a court town, East Brunswick may retroactively calculate rental bonus credits based on the COAH inclusionary number and formula for the first round. Therefore, the township received 30 rental bonus credits for the 83 rental units previously constructed as part of the first round."

C. Plan to Address Projected Growth Share

Growth Share Obligation Credits

East Brunswick is proposing to address 168 units of the projected growth share obligation with 113 units of credit and 55 compliance bonuses. East Brunswick is seeking 10 compliance bonuses for 10 completed market to affordable units, five compliance bonuses for a completed Gates Avenue Group Home, and 40 compliance bonuses for an age-restricted 100% development, Oak Creek Two, completed in June 2007. Pursuant to N.J.A.C. 5:97-3.17, compliance bonuses are only granted for inclusionary developments, 100% affordable developments or redevelopment projects; therefore, neither the market to affordable program nor the group home are eligible for a compliance bonus. With regard to Oak Creek Two, COAH's Computer Tracking and

⁵ No rental bonuses shall be granted for rental units in excess of the prior round rental obligation, therefore, PR Rental Bonus Maximum = PR Rental Obligation N.J.A.C. 5:97-3.5

Monitoring (CTM) system indicates that 39 of these units are eligible for COAH credit; therefore, East Brunswick is eligible for 39 credits and 39 compliance bonuses. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

Post-1986 Credits

Project/Development Name	Year Built or Approved	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Allies	2008	Special Needs	3	-	-	3
EBCHC Market to Affordable	various	Market to Affordable	10	-	-	10
Gates Avenue Home	2001	Special Needs	5	-	-	5
Oak Creek Two	2007	Municipally sponsored	39	Compliance	39	78
Fox Meadows	1988	Inclusionary family for-sale	29	-	-	29
Crosspointe	1988	Inclusionary family for-sale	57	-	-	57
Society Hill II East	1986	Inclusionary family for-sale	1	-	-	1
TOTALS			144		39	183

Proposed Affordable Housing Mechanisms

East Brunswick proposes to address the remaining 314-unit growth share obligation through the following mechanisms:

EBCHC Market to Affordable Program

East Brunswick proposes to utilize the EBCHC Market to Affordable Program to address 222 units of its projected growth share obligation. East Brunswick is also seeking 85 rental bonuses for this program, for a total of 307 proposed units and bonuses. East Brunswick Community Housing Corporation will administer the program, and has submitted a schedule for acquisition of the units, demonstrating that approximately 22 units will be purchased per year for the 2009– 2018 period. The units will be low-income family rental units affordable to households earning 40% of area median income. The Township has committed to do 27 units that will be affordable to very low-income households. A mix of one, two, and three-bedroom units will be acquired. Units will be owned and managed by EBCHC throughout the deed restriction period. Sources of funding include \$18.3 million in development fees provided in the spending plan, as well as potential funding from Middlesex County HOME funds, DCA HOME funds, EBCH Equity and mortgages. The Township anticipates spending approximately \$50,000 per unit on the program and allocates \$100,000 per unit in its spending plan, thus exceeding the minimum subsidy requirements of N.J.A.C. 5:97-6.9(b)3. A listing from Realtors.com was provided showing that there are currently 78 potential properties in the program's price range. Approximately 32% of the Township's housing stock consists of multi-family dwellings.

East Brunswick Township seeks a waiver for its Housing Element and Fair Share Plan, specifically to N.J.A.C. 5:97- 6.9(b)4, which specifies the number of Market to Affordable units a municipality may include in its Fair Share Plan. That subsection provides that the maximum number of market to affordable units which a municipality may include in its plan is ten sale and ten rental units or ten percent of the fair share obligation, whichever is greater. An exception to this maximum number may be granted when the municipality has demonstrated a successful history of a market to affordable program. East Brunswick therefore requests a waiver, pursuant to N.J.A.C. 5:96-15, to implement a 222-unit rental Market to Affordable program to address a portion of its growth share obligation.

East Brunswick asserts that the waiver fosters the production of affordable housing as much needed family rental units will be made available to income eligible households in a timely manner. The Township is able to purchase properties as they come onto the market, they can purchase quickly and make the unit available.

The Township stated that granting the waiver fosters the intent of, if not the letter of, the Council's rules because all the units will have 30-year deed restrictions, be affirmatively marketed and will be occupied by income eligible households.

Finally, East Brunswick has a mix of housing types in its plan. East Brunswick has in place, occupied for sale family units, family rental units and group homes. The Township has successfully completed at least 34 market to affordable units, which would permit them to exceed the limit on number of affordable units permitted in a market to affordable program pursuant to N.J.A.C. 5:97-6.9(b)4.

A COAH Task Force meeting was held on June 2, 2009. The task force recommends granting East Brunswick a waiver from N.J.A.C. 5:97- 6.9(b)4, which specifies the number of Market to Affordable units a municipality may include in its Fair Share Plan. The task force also recommends requiring the Township to complete at least 20 Market to Affordable units each year as a condition of being granted the waiver and receiving rental bonuses. **[222 family, rental units and 85 rental bonuses]**

Community Options

East Brunswick will rely on Community Options, a proposed special needs group home, to address three units of its projected growth share obligation. Community Options, Inc. of Somerset/Essex/Middlesex Counties will own and manage the three-bedroom group home. The group home will be created through the conversion of an existing home, which has been identified, and will be for developmentally disabled blind men. Community Options expects to occupy the group home in March 2009. The project will be licensed by DDD. Funding will be provided by DDD to acquire the property and operate the facility. East Brunswick's spending plan dedicates \$50,000 in development fee revenues to purchase the group home. East Brunswick has provided a description of the property. Community Options has executed a purchase contract with

the current owner. A 30-year deed restriction will be placed on the property. **[three-bedroom group home]**

Arisa

East Brunswick will utilize Arisa, an age-restricted inclusionary rental development, to address 24 units of its projected growth share obligation. East Brunswick is also seeking 24 compliance bonuses for Arisa. The 30.6-acre site (Block 149, Lots 2.02, 3.01, 4 and Block 150, Lots 34.01, 35.01 and 36.01) was rezoned for inclusionary age-restricted housing in July 2002. The Senior Citizen Mixed Use Planned Development District regulations require 20% of multi-family units and 10% of single family units to be affordable. The Planning Board granted approval for the construction of 153 age-restricted units including 24 affordable units on-site on September 22, 2004. The site has 1,600 feet of frontage along Main Street. The site is located in PA1 and has public sewer and water. East Brunswick Water Utility has indicated that there is sufficient capacity to serve the proposed development and the East Brunswick Sewerage Authority has indicated there is sufficient sewer capacity. Approximately 14.69 acres of the site are buildable. It is the former location of the Giste Brocades Yeast Processing Facility, which has been remediated in accordance with DEP regulations. East Brunswick notes that development has been delayed due to the need for several outside agency approvals and the “conservative” real estate market conditions. The Township should note that Arisa is not eligible for compliance bonuses as it was approved in September 2004. The compliance bonus is for developments approved between December 20, 2004 and June 2, 2008. **[24 age-restricted units]**

Alfieri

East Brunswick proposes to rely on Alfiera, a senior for-sale inclusionary development, to address the remaining 39 units of its projected growth share obligation. The 40.86-acre site (Block 29.01, Lots 37-42 and Block 29.06, Lots 1-7) was zoned in August 2007 to include an option wherein age-restricted units could be built at 10 units/acre with affordable family units produced at the rate of 11 percent of the market units. The ordinance requires the affordable units to be created off-site through the

developer converting market units to affordable units through a market-to-affordable program or the developer may in the alternative provide a \$3.9 million payment in lieu to the Township to do the same (\$100,000 per unit). The site has frontage along Harts Land and Mill Brook Court. The site is located in PA1 and has access to public sewer and water. The tract is surrounded to the North by single family homes and Township open space (Tices Lane Park) and to the South, West, and East by existing industrial/office uses. Twenty acres of the site are buildable and the remaining acreage contains steep slopes and 4.8 acres within a flood plain and have been placed in a permanent conservation easement. The zoning for the site, however, indicates that the permitted use of the property is for general offices and industrial/manufacturing, with planned senior citizen residence development as a conditional use. Unless the Township makes inclusionary zoning the only permitted use on the site or enters into a developers agreement to provide affordable housing, no credit can be granted for this development at this time as it does not create a realistic opportunity for the production of affordable housing. No development applications have been submitted. **[0 units]**

Proposed Growth Share Affordable Housing Mechanisms

Type/Name of Affordable Housing Mechanism	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
EBCHC Market to Affordable Program	Family rental	222	rental	85	307
Community Options	Special Needs	3	-	-	3
Arisa	Inclusionary age-restricted rental	24		-	24
TOTALS		249		85	334

Growth Share Parameters

East Brunswick proposes to address the applicable Growth Share parameters as follows:

Growth Share Rental Obligation:⁶ 124 Units

Development/Project Name	Type of Affordable Unit	# Units
Allies	Special needs	3
EBCHC Market to Affordable (completed)	Market to Affordable	10
EBCHC Market to Affordable (proposed)	Market to Affordable	222
Community Options	Special needs	3
Gates Avenue Home	Special needs	5
Arisa	Inclusionary age-restricted	24
Oak Creek Two	Municipally sponsored age-restricted	39
TOTAL		306

⁶ Projected Growth Share Rental Obligation: $.25(\text{Projected Growth Share})$ or $.25(497) = 124.25$ units
N.J.A.C. 5:97-3.10(b)3

Growth Share Family Rental Requirement⁷ : 62 Units

Development/Project Name	Type of Affordable Unit	# Units
EBCHC Market to Affordable (completed)	Market to Affordable	10
EBCHC Market to Affordable (proposed)	Market to Affordable	222
TOTAL		232

Growth Share Minimum Family Requirement⁸ : 187 Units

Development/Project Name	Type of Affordable Unit	# Units
EBCHC Market to Affordable (completed)	Market to Affordable	10
EBCHC Market to Affordable (proposed)	Market to Affordable	222
TOTAL		232

⁷ Projected Growth Share Family Rental Requirement: .5(Projected Growth Share Rental Requirement) or .5(124.25)= 62 units N.J.A.C. 5:97-3.4(b)

⁸ Projected Growth Share Family Requirement: .5(Units Addressing the Growth Share Obligation) or .5(497-124 bonuses)= 187 units N.J.A.C. 5:97-3.9

Very Low Income Minimum Requirement⁹ : 65 Units

Development/Project Name	Type of Affordable Unit	# Units
Allies	Special Needs	3
Community Options	Special needs	3
Gates Avenue Home	Special needs	5
Oak Creek Two	Municipally sponsored age-restricted	27
EBCHC Market to Affordable	Family	27
TOTAL		65

Age-Restricted Maximum¹⁰ : 124 Units

Development/Project Name	Type of Affordable Unit	# Units
Arisa	Inclusionary age-restricted	24
Oak Creek Two	Municipally sponsored age-restricted	39
TOTAL		124

Bonus Maximum¹¹ : 124 Bonuses

Development/Project Name	Type of Bonus	# Bonuses
EBCHC Market to Affordable	Rental	85
Oak Creek Two	Compliance	39
TOTAL		63

⁹ Growth Share Very Low Income Requirement: .13(Projected Growth Share Obligation) or .13(497)= 64.61 units pursuant to P.L.2008, c.46

¹⁰ Projected Growth Share Age Restricted Maximum: .25(Projected Growth Share) or .25(497)= 124 units
N.J.A.C. 5:97-3.10(c)2

¹¹ Projected Bonus Maximum: .25(Projected Growth Share) or .25(497)= 124 units N.J.A.C. 5:97-3.20

Actual Growth Share Obligation

The actual growth share obligation will be based on permanent certificates of occupancy issued within the municipality for market-rate residential units and newly constructed or expanded non-residential developments in accordance with Appendix D of N.J.A.C. 5:97. At plan evaluation review pursuant to N.J.A.C. 5:96-10, COAH will compare the actual growth share obligation with the actual number of affordable units constructed.

East Brunswick indicates that between January 1, 2004 and December 31, 2007, East Brunswick has issued certificates of occupancy for 182 housing units and also for the nonresidential square footage equivalent of 594 jobs, yielding an actual growth share obligation through December 31, 2007, of 74 affordable units.¹²

D. Summary of Plan to Address Fair Share Obligation

REHABILITATION SHARE SUMMARY

Rehabilitation Share: 46 Units

Program Name	# Units
East Brunswick Township Housing Rehab Program	46
TOTAL	46

¹² The number of residential COs (182) is initially divided by 5 to yield 36.4 units and the number of jobs (594) is initially divided by 16 to yield 37.12 units. East Brunswick's total actual growth share is therefore 74 units (36.4 + 37.12). **Note:** This number does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.5; therefore, the actual growth share may vary.

PRIOR ROUND SUMMARY
Prior Round Obligation: 648 Units

	Name of Mechanism	# Units/ Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Prior Cycle Credits	Halls Corner	153			153
	Victory Gardens	12			12
	Summerhill Group Home	4			4
Subtotal		169		-	169
Post-1986 Credits	Windsong Inclusionary Family Rental	62	-	-	62
	Country Woods Inclusionary For-Sale	91	-	-	91
	Kingswood Station Inclusionary For-Sale	64	-	-	64
	Two River Road – 100% affordable rental	4	Rental	4	8
	Oak Creek 100% affordable age-restricted rental	79	Age-restricted rental	26	105
	Society Hill II East Inclusionary For-Sale	29	-	-	29
	Summerhill Meadows Inclusionary for-sale	35	-	-	35

	Name of Mechanism	# Units/ Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
	EBCHC Buy Down	24	-	-	24
	Timber Hollow Inclusionary for-sale	41	-	-	41
Subtotal		449		30	479
TOTAL					648
Surplus/(Deficit)					0

GROWTH SHARE SUMMARY
Projected Growth Share Obligation: 497 Units

	Name of Mechanism	# Units/ Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Post-1986 Credits	Allies (special needs)	3	-	-	3
	EBCHC Market to Affordable	10			10
	Gates Ave Home	5			5
	Oak Creek Two	39	Compliance	39	78
	Fox Meadows	29			29
	Crosspointe	57			57
	Society Hill II East	1			1

Subtotal		144		39	183
Proposed Mechanisms	EBCHC Market to Affordable Program	222	Rental	85	307
	Community Options	3	-	-	3
	Arisa inclusionary age-restricted rental	24	-	-	24
Subtotal		249		85	334
TOTAL					517
Surplus/(Deficit)					+20

III. FAIR SHARE DOCUMENT REVIEW

A. Development Fee Ordinance

East Brunswick's certified plan included a development fee ordinance that was approved by COAH on October 23, 1996, and adopted by East Brunswick on September 22, 1997. COAH granted East Brunswick approval of an amendment to its development fee ordinance on October 8, 2008. East Brunswick submitted a draft amended development fee ordinance for COAH's review and approval with its third round petition. The amended development fee ordinance will be reviewed by COAH in a separate report.

B. Third Round Spending Plan

East Brunswick's prior round spending plan was approved by COAH on September 30, 1997. A revised third round spending plan was submitted by East Brunswick with East Brunswick's third round petition for COAH's review and approval. The spending plan will be reviewed by COAH in a separate report.

C. Affordable Housing Ordinance/Affordable Housing Administration

East Brunswick has an adopted affordable housing ordinance for its prior round obligation. East Brunswick has submitted a revised draft affordable housing ordinance that comports with the requirements of the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26.1 et seq., which was amended on December 20, 2004. The draft proposed ordinance has been amended to comply with the barrier free subcode of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and the accessibility requirements of N.J.S.A. 52:27D-123.15. The draft ordinance must be adopted within 45 days of COAH's grant of substantive certification and submitted to COAH immediately upon adoption.

An ordinance establishing the position of a municipal housing liaison and a resolution appointing a municipal housing liaison must be adopted by East Brunswick within 45 days of receiving substantive certification.

East Brunswick is responsible for the continued re-sale and re-rental of existing affordable units and the initial sale and rental of newly constructed affordable units within East Brunswick and has identified an experienced administrative entity for that purpose. East Brunswick uses East Brunswick Community Housing Corporation to administer its Market to Affordable Program and has submitted an executed contract. East Brunswick uses Piazza & Associates as its Administrative Agent for its inclusionary units and has submitted an executed contract. East Brunswick has submitted a written operating manual for administering affordable units within East Brunswick, including for its Market to Affordable Program and its inclusionary units.

D. Affirmative Marketing Plan

East Brunswick has submitted an affirmative marketing plan that comports with the requirements of the UHAC and ensures the units in the Township's 1987-2018 Fair Share Plan and all future affordable housing units will be affirmatively marketed to the region upon initial sale/rental and re-sale/re-rental. Once approved by COAH, the affirmative marketing plan must be adopted by resolution by East Brunswick within 45 days of COAH's grant of substantive certification and submitted to COAH.

IV. SUMMARY OF OBJECTIONS AND MUNICIPAL RESPONSE

Fair Share Housing Center

COAH received one objection to the Township of East Brunswick's (Township) Third Round plan, submitted by Adam M. Gordon, Esq., on behalf of Fair Share Housing Center (FSHC). Specifically, FSHC objects to the number of units the Township proposes to provide through the market-to-affordable program. FSHC states that East Brunswick proposes to use 232 units of market-to-affordable housing to satisfy a growth share projection of 497 units, 48 percent of the East Brunswick's growth share obligation. COAH's regulation limits the amount a municipality may include in its market-to-affordable housing program to 10 percent, unless the municipality has a proven experience in using the market-to-affordable compliance mechanism. Although FSHC concedes that East Brunswick is recognized as having one of the state's best market-to-affordable programs, the Township's experience has been with much lower numbers than what is now proposed. FSHC is concerned that the Township's ability to manage such a large scale program is unproven and does not justify relaxing COAH's 10 per cent rule set forth at N.J.A.C. 5:97-6.9(b).

Additionally, FSHC objects to this expanded program because it risks depleting the supply of housing for middle class buyers while exerting upward pressure on prices for that group. In that COAH has no jurisdiction over "middle income housing," this objection will not be addressed during mediation.

FSHC suggests that the objections to East Brunswick's Third Round Plan could be resolved by having East Brunswick: substantiate the sizable increase to its market-to-affordable program; provide supplemental information supporting opportunities for both low-to-moderate income households and middle class households; or comply with the 10 percent limit imposed by N.J.A.C. 5:97-6.9(b)4.

East Brunswick's response to Fair Share Housing Center's (FSHC) objection

Dated: April 1, 2009

COAH received East Brunswick's response to the FSHC's objection of its Third Round plan on April 3, 2009. FSHC objected to the number of units the Township proposes to use through its market-to-affordable program and the Township's ability to manage such a large program. East Brunswick clarifies its decision to utilize the market-to-affordable program as a compliant mechanism in its third round plan based on the following information:

- It has been providing low income family rental units for 30 years using this method. The Township maintains that COAH allowed it to exceed the limit based on a proven track record and maintains that COAH held the Township as a model for the production of affordable housing in the suburbs.
- The Township's residential housing inventory is 32% multiple family units. The Township asserts that there is very little buildable land left with access to sewer service. As a result, it plans to use the market-to-affordable program to increase the affordable housing stock as development occurs.
- The Township contends that the method in questions does not produce additional sprawl, traffic or crowding, but increases the affordability of housing in a municipality that is primarily built out.
- The market-to-affordable program is efficiently managed through the East Brunswick Community Housing Corporation (EBCHC) which was established 30 years ago and has steadily increased the inventory of units as well as their ability to maintain them. Currently, they own and operate 50 units. The Corporation is well-staffed and the program is self sustaining. If more units are acquired, requiring additional staff, the additional rental income will cover the expense.
- The program is flexible and can be customized based on fair share growth, affordable housing obligation and community need. The numbers referenced in the third round plan are based on the figures provided by COAH and would be adjusted for actual development and any economic downturn. The program provides the ability to further buy down the units to serve the very low income population on each unit to meet or exceed the COAH requirement or to serve a particular need in the community.

- The program has been successful despite the changing status of the third round rules over recent years and has continued to grow at a steady rate. The purpose is not to merely “comply” but to keep East Brunswick affordable through opportunities for lower income residents to benefit from the exceptional school system and other amenities of the Township.
- The program helps to support and stabilize the housing market. The EBCHC, through the market-to-affordable program, purchases market rate condominiums from middle income homeowners at a fair market value. Thus, allowing these homeowners to move forward within the housing market and the community.
- The Township purchases units in short sales and pre-foreclosure which is beneficial to the developments bought into and the community as a whole.
- The Township, county and state agencies (including COAH) have been supportive of the program throughout the years by providing grants, staffing, land and support services as well as property tax abatements. The Township will make available references on the viability of the program.

The Township acknowledges that affordable housing is not always a popular concept in New Jersey, especially in this particular economic environment, but supports this program because of its proven ability to thrive and obtain financial support and positive publicity. The Township remarks that FSHCs objection undermines its efforts to “do the right thing” by creating the suspicion that the program produces “too much” affordable housing and feels this misguided attempt by FSHC may ultimately cause East Brunswick to produce less housing rather than more.

V. MEDIATION

Mediation commenced on June 2, 2009 and concluded on June 2, 2009. This mediation ended without the parties reaching a settlement. The mediator did not believe that an agreement would be possible in light of the opposing views of the parties with regard to what the Township was obligated to provide under COAH’s rules in the event that actual growth differed from COAH’s projected growth. A copy of the Mediation Report is attached as Attachment A.

VI. RECOMMENDATION

COAH staff recommends that East Brunswick Township be granted third round substantive certification. East Brunswick must adopt all necessary implementing ordinances within 45 days of the grant of substantive certification and submit certified copies of the adopted ordinances to COAH within seven days of the adoption. As a condition of being granted the waiver for its Market to Affordable program, East Brunswick must complete at least 20 Market to Affordable units per year.

**COAH REPORT IN RESPONSE TO COMMENTS
RECEIVED REGARDING COMPLIANCE REPORT
EAST BRUNSWICK TOWNSHIP / MIDDLESEX COUNTY
REGION #3
July 20, 2009**

On February 23, 2009, FSHC submitted an objection to COAH regarding East Brunswick's Housing Element and Fair Share Plan. The comments focused on the Township's Market to Affordable program: that the Township is exceeding to 10 percent maximum and does not have a sufficient record, that the Township should submit additional information because the Market to Affordable program is being substantially increased and that the Market to Affordable program will not add new units to the housing supply and as such will deplete the housing supply available to the middle class. A Pre-mediation Report was issued on April 9, 2009. Mediation commenced on June 2, 2009 and concluded on June 2, 2009. A Mediation Report was issued on June 19, 2009 as part of the Township's Compliance Report.

During the 14-day comment period following the receipt of East Brunswick Township's Compliance Report, one comment was received: Adam M. Gordon, Fair Share Housing Center (FSHC). The comments do not alter the Compliance Report.

Fair Share Housing Center's Comments

First, FSHC states their agreement with the Compliance Report requiring East Brunswick to provide 20 Market to Affordable units per year. FSHC asserts that the task force correctly limited East Brunswick's waiver as per court precedent.

Second, FSHC maintains that large Market to Affordable programs effect lower-income housing stock because new housing units are not being created, that the mechanism is a "zero sum game where lower-income tenants will gain housing at the expense of housing for another group." The program will affect filtering and create a situation where units are double counted in the COAH methodology.

Third, FSHC takes issue with the Mediation Report and disagrees that there were no contested issues requiring the transfer of this case to OAL at the conclusion of mediation. FSHC states that there were three contested issues: are the development fee revenues projected by East Brunswick based on realistic analysis, is the Golden Triangle site available, approvable,

developable and suitable for inclusionary development, and will the proposed Market to Affordable program dilute the supply of housing available to the middle class.

COAH's Response

COAH does not assert jurisdiction over middle class housing issues as the middle class was not a beneficiary of the Mount Laurel cases. COAH maintains that the mechanism will not affect filtering and will not in turn affect COAH's methodology.

Responding to the issues with the East Brunswick Mediation Report, East Brunswick has submitted a Resolution of Intent to Bond if there is a shortfall of development fees collected. The Township is required to bond if any mechanism is unable to be fully funded with the monies that are collected through development fees. Regarding the Golden Triangle site, it is a fully occupied and functioning commercial development. The Township did not include the site in its plan because there were a number of additional mechanisms that served a wide range of affordable housing types. COAH does not dictate to a municipality what must be included in its Housing Element and Fair Share Plan. The last issue was discussed above; COAH does not have the jurisdiction to control all types of housing for all income levels.